THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26900 of 2006

Dated: 27.12.2006

Between:

Pedamalla Ramarao and others.

..... PETITIONERS

AND

The State of Andhra Pradesh,
rep.by the Principal Secretary, Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

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ORDER:

Petitioner No.1 is the owner of land admeasuring Acs.4.40 cents in R.S.No.29 and petitioners 2 and 3 are the owners of land admeasuring Ac.0.50 cents each in R.S.No.237/4 situated at Undrajavaram Mandal in West Godavari District. They allege that there is earthen road (puntha) running from East to West, which is the only passageway to the petitioners' and other owners of the agricultural lands. The land on the southern side of the road margin was encroached upon by number of persons. Repeated complaints to respondents 2 to 4 about this proved futile. Therefore, husbands of petitioners 2 and 3 and others filed O.S.No.529 of 1996 on the file of the Court of the Principal Junior Civil Judge, Tanuku, which was dismissed on 05.09.2005. In the said suit, a decree for permanent injunction against as many as 27 encroachers from making constructions was sought. Be that as it is, the petitioners filed O.S.No.748 of 2005 on the file of the Court of I Additional Junior Civil Judge, Tanuku, for permanent injunction against the defendants
1 and 2/respondents 5 and 6 herein from causing any obstruction from using the passage/puntha and for mandatory injunction to defendants
3 to 5 therein/respondents 1 to 3 herein to prevent encroachments of puntha. It is their case that the civil Court, while ordering notice in I.A.No.3013 of 2005 in O.S.No.748 of 2005, ordered *status quo* on 12.12.2005, and in spite of the same, respondents 3 and 4, namely, the Revenue Divisional Officer (RDO) and the Mandal Revenue Officer (MRO) are proceeding with the proposal to convert the puntha into house sites for distributing the same to the occupants/encroachers. Therefore, they filed instant writ petition seeking a Mandamus declaring the action MRO in converting the puntha into house sites and proposing to grant the same as house site pattas to the encroachers as illegal and arbitrary.

The petitioners allege that respondent No.6 and others encroached the land causing obstruction to the passage way/puntha. Except respondent No.6, none of the other encroachers is made a party. Secondly, the petitioners have already approached the civil Court by filing O.S.No.748 of 2005, in which RDO and MRO are arrayed as defendants
4 and 5. This Court has perused the written statement filed by MRO in O.S.No.748 of 2005, in which the following averments are made.

> This defendant humbly submits that because of the occupations made by the several people in the Government puntha poramboke, there will not be any objection or nuisance to the plaintiffs and the plaintiffs have no right to question the same. This defendant humbly submits that the husbands of the plaintiffs 2 and 3 and others filed a suit in O.S.No.529/96 on the file of the PJCJ, Tanuku in respect of the same schedule puntha and the same was dismissed and there is no appeal against the said suit and so it became final. Thus the present suit is barred by principles of Resjudicata. The plaintiffs are well aware about the said suit and wantonly suppressed the material facts before the Hon'ble court and filed this suit only with a view to prevent the Government officials from discharging their Executive powers and to grab the Government property.

In view of the above, this Court is not convinced with the grievance of the petitioners about their inconvenience. This Court hastens to add that when once the petitioners have already availed the common law remedy, they cannot maintain parallel proceedings under Article 226 of the Constitution of India. This is settled principle of law. The petitioners, therefore, may approach the civil Court and take appropriate action for redressal of their grievance. In this writ petition, no relief can be granted. It is also made clear that as and when the civil Court decides the matter, consideration shall not be influenced by any of the observations made hereinabove.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

27th December, 2006
ghn